Supreme Court, U.S.
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No. 02-1078

IN THE
SUPREME COURT OF THE UNITED STATES

TEAMSTERS AUTOMOBILE TRANSPORT
CHAUFFEURS, DEMONSTRATORS, and HELPERS
LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and
TRANSPORT SUPPORT, INC.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

ROBERT L. MERCADO*
DEAN & FULKERSON, P.C.
801 West Big Beaver Rd.
Fifth Floor
Troy, Michigan 48084
(248) 362-1300
*Counsel of Record
Attorneys for Respondents

21 pp

QUESTION PRESENTED

In Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970), this Court held that Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 authorized a trial court to enjoin a work stoppage in violation of a contractual no-strike clause notwithstanding the anti-injunction provision of the Norris-LaGuardia Act, 29 U.S.C. §104. The question presented by this case is whether the Eighth Circuit Court of Appeals correctly found that Petitioner's work stoppage in December 1999 was enjoinable under the principles enunciated in Boys Market, and, therefore, affirmed the District Court's grant of injunctive relief.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner's description of Respondents in its petition is not completely accurate.

Respondent Allied Systems, LTD is a Georgia limited partnership. Respondent Transport Support, Inc. is a Delaware corporation. Both Respondents are wholly-owned subsidiaries of Allied Automotive Group, Inc. Allied Automotive Group, Inc. is a wholly-owned subsidiary of Allied Holdings, Inc., a publically held corporation (trading symbol "AHI").

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BRIEF IN OPPOSITION

Respondents Allied Systems, LTD. and Transport Support, Inc. respectfully pray that Petitioner Teamsters Automobile Transport, Chauffeurs, Demonstrators, and

Helpers Local Union No. 604's January 15, 2003 Petition for Writ of Certiorari seeking review of a final order and judgment entered September 17, 2002 and order denying petition for panel rehearing entered October 17, 2002 by the United States Court of Appeals for the Eighth Circuit be denied.

OPINION BELOW

The decision sought to be reviewed has been reported as Allied Systems, LTD. v. Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers, Local 604, 304 F.3d 785 (8th Cir. 2002) and is accurately reprinted in Appendix B of Petitioner's Petition. The order of the Court of Appeals denying the petition for panel rehearing is accurately reprinted in Appendix A of Petitioner's Petition.

JURISDICTION

Respondents agree with Petitioner that all jurisdictional requisites have been complied with for review

of this matter pursuant to 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Respondents rely upon the facts set forth in the Court of Appeals' opinion in Allied Systems, LTD v. Teamsters Automobile Transport, Chauffeurs, Demonstrators and Helpers, Local 604, 304 F.3d at 787-790 and in the memorandum and order of the United States District Court for the Eastern District of Missouri, Eastern Division, (Appendix D, pp. 15a-22a). Respondents respectfully state that the facts as found by the District Court and the Court of Appeals that Petitioner engaged in a work stoppage over arbitrable issues in violation of the no-strike clause contained in the parties' collective bargaining agreement warranted the grant of the temporary restraining order and preliminary injunction issued by the District Court under the principles enunciated by this Court in Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970). The decision

of the Court of Appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. The facts in this case further support the jury's award of damages arising from the work stoppages.

Because Petitioner was found to have engaged in work stoppages over arbitrable issues in violation of the labor contract's no-strike clause, its Petition should not be granted. Denial of the Petition is further warranted since it does not involve an important federal question over which there is a conflict between the court of appeals and any state court of last resort; it does not entail an important question of federal law that has not been, but should be, settled by the Court; and it does not involve a claim that the Court of Appeals' decision represents such a departure from accepted and usual judicial proceedings as to call for the Court's exercise of its supervisory power.

REASONS FOR DENYING THE PETITION

1. THE DISTRICT COURT WAS AUTHORIZED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. §185 AND THIS COURT'S DECISION IN BOYS MARKET, INC. v. RETAIL CLERKS UNION, LOCAL 770, 398 U.S. 235 (1970), TO ENJOIN PETITIONER'S DECEMBER 1999 WORK STOPPAGE IN VIOLATION OF THE NO-STRIKE CLAUSE OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.

Petitioner contends that the District Court lacked jurisdiction to issue a temporary restraining order and preliminary injunction because Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, prohibits the grant of injunctive relief. This argument is without merit. The District Court granted Respondents' request for a temporary restraining order and preliminary injunction, following two (2) evidentiary hearings, based on its finding that Petitioner had engaged in a work stoppage over arbitrable issues in violation of the no-strike clause contained in the parties'

collective bargaining agreement. It is well settled that the grant of injunctive relief, where a union has engaged in a work stoppage over matters subject to final and binding arbitration and in contravention of a no-strike clause, is not prohibited by Section 4 of the Norris-LaGuardia Act.

In Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970), this Court created an exception to the anti-injunction provisions of the Norris-LaGuardia Act in order to accommodate the provisions of Section 301 of the Labor Management Relations Act. In Boys Market, this Court held that the strong federal policy favoring arbitration required an exception to the anti-injunction provisions when the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than strike over them. The narrow exception created by Boys Market is consistent with the congressional policy in favor of arbitration of labor disputes. Textile Workers Union v. Lincoln Mills, 353 U.S.

448 (1957); United Steelworkers v. Warrior and Gulf Navigation Company, 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel and Car Corporation, 363 U.S. 593 (1960) and United Steelworkers v. American Manufacturing Company, 363 U.S. 564 (1960).

In granting the temporary restraining order and preliminary injunction, the District Court found that Petitioner's activities in December 1999 were in violation of the contractual no-strike clause; that the violation was precipitated by a dispute subject to the mandatory arbitration procedures, which the parties were ordered to arbitrate, and that an injunction was otherwise warranted under the ordinary principles of equity. This is the very analysis that this Court mandated in Boys Market. Therefore, the District Court's decision, affirmed by the Court of Appeals, was correct and not in conflict with any decision of this Court or any other court of appeals.

2. THERE IS NO MERIT TO PETITIONER'S CONTENTION THAT THIS COURT'S DECISION IN BOYS MARKET DID NOT APPLY TO THE DECEMBER 1999 WORK STOPPAGE, THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN RELYING UPON BOYS MARKET, OR THAT THE COURT ERRED BY SHIFTING THE BURDEN OF PROOF TO PETITIONER.

Petitioner's contention that this Court's decision in Boys Market, *supra,* did not apply to this case or that the District Court abused its discretion in applying Boys Market is totally without merit. Respondents' cause of action against Petitioner was brought under Section 301 of the Labor Management Relations Act, *supra*. Boys Market is based on Section 301. The Petitioner did not contest the District Court's jurisdiction under Section 301. The District Court found, consistent with Boys Market, that there was an underlying collective bargaining agreement; that the collective bargaining agreement contained a no-strike clause; that the collective bargaining agreement contained a

mandatory grievance and arbitration procedure; and that the Petitioner had engaged in a work stoppage over grievable disputes subject to arbitration. The Petitioner argued both to the District Court and jury that its actions did not contravene the contractual no-strike prohibition because it was engaged in purported area standards picketing. Both the District Court and jury rejected Petitioner's argument since the evidence established that, contrary to Petitioner's contention, its true motivation for picketing was over grievable issues. In granting the temporary restraining order and preliminary injunction, the District Court relied upon Westmoreland Coal Company, Inc. v. International Union, United Mine Workers of America, 910 F.2d 130, 138 (4th Cir. 1990), which held that where pickets are used for the "purpose of disguising the true nature" of a work stoppage, such evidence supports not only a finding that the union violated its obligation to arbitrate disputes pursuant to the collective bargaining agreement, but

that the union was aware that such picketing, when stripped of its disguise, would violate the collective bargaining agreement. That is exactly the evidence adduced at the evidentiary hearings and at the trial in this case. The District Court, the jury and the Court of Appeals rejected Petitioner's argument that Petitioner was simply engaged in area standards picketing and were persuaded that the evidence established that Petitioner's true motive for the work stoppage was over grievable issues.

With respect to Petitioner's contention that the District Court improperly placed the burden of proof on Petitioner, this argument is clearly rebutted by a cursory review of the District Court's Memorandum and Order which confirms that it was the Respondents that were required to satisfy the necessary criteria mandated by this Court under Boys Market in order to obtain the injunctive relief (Appendix D, pp. 16a-22a).

3. PETITIONER'S CONTENTION THAT THE DISTRICT COURT ERRED BY READING EXCERPTS FROM THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION TO THE JURY IS WITHOUT MERIT SINCE THE UNION ALSO ASKED THE COURT TO READ PORTIONS OF THE INJUNCTIVE ORDERS TO THE JURY, REQUESTED THAT THE ENTIRE DOCUMENTS BE MADE EXHIBITS, AND DID NOT RAISE THE ALLEGED ERROR AT TRIAL.

Petitioner argues that the District Court erred by reading to the jury excerpts from the temporary restraining order and preliminary injunction. This argument is without merit. The Court of Appeals found that Petitioner made no objection to the admission of the orders at trial, requested that the District Court read to the jury additional portions of one of the injunctive orders, and further requested that the orders be admitted into evidence. (Appendix B, pp. 6a-7a). In light of the Court of Appeals' specific findings, there is absolutely no merit to Petitioner's contention that its belated objection

is grounds for vacating the jury award.

4. PETITIONER'S ASSERTION THAT THE COURT OF APPEALS ERRED BY FINDING THAT THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WERE MOOT IS WITHOUT MERIT.

The decision of the Court of Appeals is correct and does not conflict with any decision of this Court or any other court of appeals with respect to the issue of mootness. The Court of Appeals held that Petitioner had the option of taking an interlocutory appeal of the District Court's grant of preliminary injunctive relief or waiting until after a final judgment had been rendered. Sierra Club v. Robertson, 28 F.3d 753, 756 n. 3 (8th Cir. 1994). Petitioner elected to wait until after final judgment had been rendered. The Court of Appeals noted that federal appellate jurisdiction extends only to actual cases or controversies still in existence at the time of appellate review, citing the United States Constitution, Article III, Section 2 and Ashley, Drew and N. Ry. Co. v. United

Transp. Union, 625 F.2d 1357, 1361 (8th Cir. 1980). The Court of Appeals also relied upon Lebanon Chemical Corporation v. United Farmers Plant Food, Inc., 179 F.3d 1095, 1099 (8th Cir. 1999), for the principle that the propriety of a temporary restraining order and preliminary injunction may become moot through the passage of time.

Respondents' request for a permanent injunction became moot when approximately two (2) months after the trial and jury award, Respondents lost the General Motors business at Wentzville, Missouri. Therefore, there was no actual case or controversy with respect to the equitable relief in existence at the time of appellate review.

With respect to Petitioner's contention that the mootness doctrine should not be applied because Petitioner was prejudiced by the reading of the temporary restraining order and preliminary injunction to the jury, this argument is foreclosed by the fact that Petitioner did not object at trial,

Petitioner asked the District Court to read additional excerpts from one of the injunctive orders to the jury, and moved for the admission into evidence of the injunctive orders as found by the Court of Appeals (Appendix B, pp. 6a-7a). In light of these facts, Petitioner's argument, that it was prejudiced, lacks merit.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DEAN & FULKERSON, P.C.

By:_____

Robert L. Mercado
Counsel of Record
801 West Big Beaver Road
Fifth Floor
Troy, Michigan 48084
(248) 362-1300

Attorneys for Respondents
Allied Systems, LTD. and
Transport Support, Inc.

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